IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.C. No. 58 of 2003 (O & M)

Date of decision: 19.4.2007

Commissioner of Central Excise Commissionerate, Jalandhar

...Petitioner

Versus

M/s Partap Steel Rolling Mills, G.T.Road, Chheharta, Amritsar

and another

...Respondents

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Sanjeev Kaushik, Advocate for the revenue

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RAJESH BINDAL, J.

The Revenue has approached this Court by filing the present petition under Section 35 H (1) of the Central Excise Act, 1944 (for short 'the Act') seeking a direction to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, 'the Tribunal') to refer the following question of law, arising out of order dated 1.8.2002 passed by the Tribunal in Appeal No. E/738 to E/742/2002, for opinion of this Court:-

> **"**Whether the credit on Foundry Fluxes and Chemicals falling under Chapter 38 of Central Excise Tariff Act, 1985 is admissible under Rule 57Q of the Central Excise Rules, 1944 when the above said items were not covered under the definition "Capital goods" as defined under Rule 57Q during the relevant period?"

Briefly the facts of the case are that the assessee is engaged in the manufacture of iron and steel products. It was availing the facility of modvat credit under Rule 57Q of Central Excise Rules, 1944 (for short, the Rules'). During the period in question, the assessee availed modvat credit on IRL dolopatch mix and Foundry Fluxes and Chemicals falling under Chapter 38 as capital goods under Rule 57Q of the Rules, which claim was disallowed by the adjudicating authority. In appeal, the Commissioner of Appeal (for short 'the CIT') accepted the plea of the assessee and set aside the order passed by the adjudicating authority, disallowing the modvat credit. While doing so, it relied upon an order passed by the Tribunal in assessee's own case. Still in further appeal before the Tribunal, the revenue failed. There is nothing on record to show as to what is the status of the case relied upon by the Tribunal passed by it earlier in case of the assessee itself. However, still we find that the issue had already been gone into by this Court in **Excise Duty Reference No.7 of 1997 (M/s Oswal Steels, Faridabad Vs. Collector of Central Excise, New Delhi)** decided on December 17, 2004 wherein, inter-alia, referring to the judgment of Hon'ble the Supreme Court in **Central Excise Commissioner, Bangalore Vs. M/s Escorts Mahle Limited, AIR 2003 SC 2234** and judgments of this Court in **Collector of Central Excise, Chandigarh Vs. Zenith Papers 2002 (146) ELT 518** and in **Central Excise Case No.7 of 2001 (Commissioner of Central Excise, Chandigarh Vs. M/s Bhushan Industries Limited, Chandigarh)** decided on 28.8.2001, a similar question was answered against the revenue. As claim made by the assessee in the present case is squarely covered by the judgments of this Court in its favour, we do not find any question of law arises in the present case.

Accordingly, the petition is dismissed.

(Rajesh Bindal)
Judge

April 19, 2007 **(M.M.Kumar)**
Pka **Judge**